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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

BARBARO TECHNOLOGIES, LLC

Plaintiff(s),

vs.

NIANTIC, INC.

Defendant(s).

Case Number: 18-cv-02955-RS

**STIPULATION & ORDER RE:  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION FOR PATENT  
LITIGATION**

Upon the stipulation of the parties, the Court ORDERS as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.”

1           2. This Order may be modified in the Court's discretion or by stipulation. The parties  
2 shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil  
3 Procedure 16 Conference.

4           3. As in all cases, costs may be shifted for disproportionate ESI production requests  
5 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory  
6 discovery tactics are cost-shifting considerations.

7           4. A party's meaningful compliance with this Order and efforts to promote efficiency and  
8 reduce costs will be considered in cost-shifting determinations.

9           5. The parties are expected to comply with the District's E-Discovery Guidelines  
10 ("Guidelines") and are encouraged to employ the District's Model Stipulated Order Re: the  
11 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer  
12 regarding Electronically Stored Information.

13           6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45  
14 shall not include email or other forms of electronic correspondence (collectively "email"). To  
15 obtain email parties must propound specific email production requests.

16           7. Email production requests shall only be propounded for specific issues, rather than  
17 general discovery of a product or business.

18           8. Email production requests shall be phased to occur after the parties have exchanged  
19 initial disclosures and basic documentation about the patents, the prior art, the accused  
20 instrumentalities, and the relevant finances. While this provision does not require the production  
21 of such information, the Court encourages prompt and early production of this information to  
22 promote efficient and economical streamlining of the case.

23           9. Email production requests shall identify the custodian, search terms, and time frame.  
24 The parties shall cooperate to identify the proper custodians, proper search terms and proper  
25 timeframe as set forth in the Guidelines.

26           10. Each requesting party shall limit its email production requests to a total of six  
27 custodians per producing party for all such requests. The parties may jointly agree to modify this  
28

1 limit without the Court's leave. The Court shall consider contested requests for additional  
2 custodians, upon showing a distinct need based on the size, complexity, and issues of this  
3 specific case. Cost-shifting may be considered as part of any such request.

4 11. Each requesting party shall limit its email production requests to a total of five search  
5 terms per custodian per party. The parties may jointly agree to modify this limit without the  
6 Court's leave. The Court shall consider contested requests for additional search terms per  
7 custodian, upon showing a distinct need based on the size, complexity, and issues of this specific  
8 case. The Court encourages the parties to confer on a process to test the efficacy of the search  
9 terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such  
10 as the producing company's name or its product name, are inappropriate unless combined with  
11 narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive  
12 combination of multiple words or phrases (*e.g.*, "computer" and "system") narrows the search  
13 and shall count as a single search term. A disjunctive combination of multiple words or phrases  
14 (*e.g.*, "computer" or "system") broadens the search, and thus each word or phrase shall count as a  
15 separate search term unless they are variants of the same word. Use of narrowing search criteria  
16 (*e.g.*, "and," "but not," "w/x") is encouraged to limit the production and shall be considered  
17 when determining whether to shift costs for disproportionate discovery. Should a party serve  
18 email production requests with search terms beyond the limits agreed to by the parties or granted  
19 by the Court pursuant to this paragraph, this shall be considered in determining whether any  
20 party shall bear all reasonable costs caused by such additional discovery.

21 12. Nothing in this Order prevents the parties from agreeing to use technology assisted  
22 review and other techniques insofar as their use improves the efficacy of discovery. Such topics  
23 should be discussed pursuant to the District's E-Discovery Guidelines.

24  
25 **IT IS SO STIPULATED**, through Counsel of Record.

1 August 16, 2018

Respectfully submitted,

2 **DUNLAP CODDING, PC**

3  
4 By /s/ Jordan A. Sigale

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18 Attorneys for Defendant

NIANTIC, INC.

19 **ECF ATTESTATION**

20 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this  
21 document has been obtained from any other signatory to this document.

22 Dated: August 16, 2018

23 /s/ Jordan A. Sigale

24 Jordan A. Sigale

25 **IT IS ORDERED** that the forgoing Agreement is approved.

26 Dated: 8/29, 2018

27 

28 THE HONORABLE RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE